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DT02 Rec'd PCT/PTO ; 4 JUN 2004



00766.000046

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
HIROMASA MIYAJI ET AL.) : Examiner: N/Y/A
Application No.: 09/763,793) : Group Art Unit: N/Y/A
Filed: February 27, 2001) : Confirmation No. 3687
For: NOVEL POLYPEPTIDE) : June 11, 2004

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450
Attention: Patricia Booker

RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE

Sir:

This is in response to the NOTIFICATION OF DEFECTIVE RESPONSE mailed May 26, 2004, copy attached at Tab A.

The Notification requires (i) a \$130.00 surcharge for filing the oath or declaration later than 30 months from the priority date.

The Notification also requires (ii) additional claim fees of \$1154.00.

These points are discussed in turn.

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First, the Notification now acknowledges^{1/} that an executed declaration was filed on February 27, 2001. The priority date claimed is August 27, 1998. Therefore, the declaration was not filed "after" 30 months from the priority date, it was filed at 30 months from the priority date. Accordingly, no surcharge is due.

As to the second point, the asserted deficiency in the claim fee too is not well understood. That is, the Notification states there is additional claim fees of \$1154.00 due as a non-small entity, including "\$864 for 48 total claims over 20. \$290 for multiple dependent claim surcharge".

However, the undersigned paid \$3578 when the application was filed (see the postcard at Tab B) for 156 claims and multiple dependencies. A copy of our cancelled check is attached at Tab C.

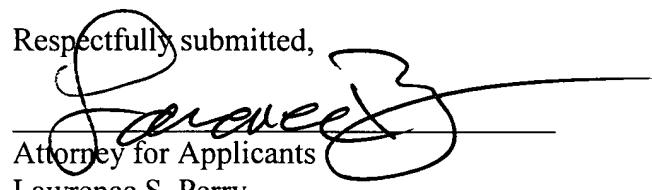
Accordingly, the Commissioner is hereby respectfully requested to credit deposit account No. 06-1205 for overpayment in excess of \$1154.00. Nonetheless, in order to reduce all issues, if for some reason any further claim fees (or indeed, the declaration surcharge fee) are required, such may be charged to deposit account No. 06-1205.

In either event, please issue correspondence directed to the undersigned explaining how these declaration and claim fee discrepancies are resolved.

^{1/} Applicants previously filed, on May 4, 2004, a Request for Clarification of Decision on Petition pointing out that the formal papers in this case were complete.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our below listed address.

Respectfully submitted,



Attorney for Applicants
Lawrence S. Perry
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/763,793	Hiromasa Miyaji	766.46

INTERNATIONAL APPLICATION NO.	
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PCT/JP99/04602	
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I.A. FILING DATE	PRIORITY DATE
08/26/1999	08/27/1998

Lawrence S Perry
 Fitzpatrick, Cella, Harper & Scinto
 30 Rockefeller Plaza
 New York, NY 10112

CONFIRMATION NO. 3687

371 FORMALITIES LETTER



OC000000012785968

Date Mailed: 05/26/2004

NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- Priority Document
- Copy of the International Application filed on 12/03/2003
- Copy of the International Search Report filed on 12/03/2003
- Copy of IPE Report filed on 12/03/2003
- Preliminary Amendments filed on 12/03/2003
- Oath or Declaration filed on 02/27/2001
- Request for Immediate Examination filed on 12/03/2003
- Copy of references cited in ISR filed on 12/03/2003
- U.S. Basic National Fees filed on 12/03/2003
- Assignment filed on 12/03/2003

Applicant's response filed 02/27/2001 is hereby acknowledged. The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 04/07/2004 have not been completed.

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- \$130 Surcharge for providing the oath or declaration later than 30 months from the priority date (37 CFR 1.492(e)) has not been paid in full .

Applicant is required to complete the response within a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).

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- Additional claim fees of \$1154 as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.
- \$130 Late oath or declaration Surcharge.

SUMMARY OF FEES DUE:

Total additional fees required for this application is \$1284 for a Large Entity:

- Total additional claim fee(s) for this application is \$ 1154
 - \$864 for 48 total claims over 20.
 - \$290 for multiple dependent claim surcharge.

ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

PATRICIA A BOOKER

Telephone: (703) 305-3738

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
09/763,793	PCT/JP99/04602	766.46

FORM PCT/DO/EO/916 (371 Formalities Notice)